



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

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FROM: Ron Stelling - MADEP

TO: George Harding - EPA

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DATE: 7/9/03

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COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of )

Eastern Minerals, Inc. )

ADMINISTRATIVE CONSENT ORDER  
ACO-NE-OO-9001-67

**I. The Parties**

1. The Department of Environmental Protection (the "Department") is a duly constituted agency of the Commonwealth of Massachusetts. The Department maintains offices at One Winter Street, Boston, Massachusetts 02108 and maintains a regional office at 205A Lowell Street, Wilmington, Massachusetts 01887.
2. Eastern Minerals, Inc. (the "Respondent") is a Massachusetts corporation in good standing with business offices and an agent for service of process, the SMP Trust, located at 83 Rimdo Park Drive, Lowell, MA 01851 and offices and a product receiving, storage and distribution center at 37 Marginal Street, Chelsea, MA 02150.

**II. Statement of Facts and Law**

3. The Department is authorized to implement and enforce the provisions of G.L. c. 85, § 7A: Storage and Use of Snow Removal Chemicals.
4. The Department implements and enforces the provisions of the Wetlands Protection Act, G.L. c. 131, § 40 (the "Wetlands Act" or the "Act") and the regulations promulgated thereunder at 310 CMR 10.00 (the "Wetlands Regulations") and the Clean Air Act, G.L. c. 111 § § 142A – 142J and the regulations promulgated thereunder at 310 CMR 7.00 (the "Air Regulations").
5. The Department is authorized to assess civil administrative penalties by G.L. c. 21A, § 16 and the regulations promulgated thereunder at 310 CMR 5.00.
6. On November 8, 1999, the Secretary of Environmental Affairs issued a Certificate on the Environmental Notification Form submitted by Respondent (the "Certificate") in connection with its proposal to dredge 43,200 cubic yards of materials from the Chelsea Creek and estuary, which abuts Respondent's 37 Marginal Street property. The Chelsea Creek and estuary are areas subject to protection under the Wetlands Act and the Wetlands Regulations.

7. The Certificate, a copy of which is attached hereto as Exhibit A, states as follows:

[T]he project site [Respondent's 37 Marginal Street location] currently contains a large, partially covered salt pile for use on roadways. Several comments have raised concerns that the existing salt pile does not meet statutory standards for storage contained in M.G.L. Chapter 85, Section 7A. Improper storage of salt can lead to water quality problems (the site appears to sheet drain into Chelsea Creek) and impact air quality as well (which may present long term health risks to abutting residential areas). Proper salt pile storage represents an enforcement issue most appropriately addressed by DEP and the City of Chelsea. I ask that DEP consider the potential impacts of the salt pile storage during its permitting process, and consider any enforcement actions that may prove necessary to bring the salt storage activities into full compliance with applicable laws.

8. Respondent's product receiving, storage and distribution center at 37 Marginal Street, Chelsea, MA 02150 (the "Site") is comprised of 4.5 acres, facing Marginal Street, Chelsea, with a paved yard located within 200 yards of the Chelsea Creek and estuary ("the wetlands"). Respondent purchases and re-sells bulk quantities of snow control chemicals; specifically, salt treated with ferrocyanide ("salt"). Respondent maintains three docks, three cranes equipped with buckets, front-end loaders and other off-road construction equipment at the Site, which it uses for the unloading, stockpiling, storage, and transport of the salt it sells at the Site.

9. Respondent stores the salt in a large open stockpile, within 200 yards of the wetlands. The salt remains at the Site for most of the year in an uncovered state. Respondent does not store the salt in a building or other solid frame storage shed. The open, outdoor storage causes or allows the salt to run off into the wetlands during rain and snow and allows the salt to blow into the ambient air space.

10. On January 31, 2000, the Department issued a Notice of Noncompliance to Respondent (NON-NE-00-1009), a copy of which is attached hereto as Exhibit B. The Notice of Noncompliance advised Respondent that its storage of the salt, exposed to the open air and within 200 yards of the wetlands, violated the provisions of G.L. c. 85, § 7A. The actions to be taken by Respondent, pursuant to the Notice of Noncompliance, were: (1) on or before February 29, 2000, remove the salt from all locations within 200 yards of the wetlands and (2) thereafter comply with the provisions of G.L. c. 85 § 7A.

11. On or about February 24, 2000, Department staff visited the Site and observed that approximately 90,000 metric tons of salt were stored in an open, outdoor pile at the Site, within 200 yards of the wetlands.

12. On or about March 4, 2000 and continuing through March 8, 2000, the Liberian Island Freight Vessel; the "R. Peter Elrick" berthed at the Site and unloaded approximately 110,000 metric tons of salt purchased by Respondent. The salt was

unloaded by the Respondent's cranes and front-end loaders and was stored in the open yard, uncovered and uncontained, until April 10, 2000. On or about April 10, 2000, Respondent covered the salt with a tarpelin, but Respondent continued to store the salt within 200 yards of the wetlands.

13. In the course of unloading, stockpiling, storing and transporting the salt during the March 4 – March 8, 2000 time period, salt from the buckets of the cranes, from the front-end loaders, and from the cargo hold of the R. Peter Elrick was discharged into the wetlands.

14. In the course of unloading, stockpiling, storing and transporting the salt during the March 4 – March 8, 2000 time period, salt from the buckets of the cranes, from the front-end loaders, from the cargo hold of the R. Peter Elrick, and from the stockpile at the Site was emitted into the ambient air space.

15. On or about April 10, 2000, Department staff again visited the Site and observed that the salt pile had been covered with a tarpelin, but that Respondent continued to store the salt within 200 yards of the wetlands.

16. Based upon receipt of several citizen complaints and its own investigation, on April 19, 2000, the Department issued a Notice of Noncompliance (NON-NE-00-9080-67) to Respondent, a copy of which is attached here as Exhibit C. The Notice of Noncompliance advised Respondent that its management of the uncovered salt violated the Wetlands Protection Act and the Wetland Regulations and the Clean Air Act and the Air Regulations. The actions to be taken by Respondent, pursuant to the Notice of Noncompliance, were, on or before May 3, 2000: (1) submit a written description of Respondent's existing management practices regarding the salt, including a description of the measures taken to prevent run-off and/or discharge of the salt into the wetlands and the measures taken to prevent emissions from the unloading operations and from the stockpiled salt into the ambient air space; (2) submit a written proposal, for the Department's review and approval, of short term procedures to be implemented to prevent run-off and/or discharge of salt into the wetlands and to prevent emissions from the unloading operations and from the stockpiled salt into the ambient air space, such procedures to be implemented by July 1, 2000; (3) submit a written proposal, for the Department's review and approval, of long term procedures to be implemented to prevent run-off and/or discharge of salt into the wetlands and to prevent emissions from the unloading operations and from the stockpiled salt into the ambient air space; and (4) otherwise come into full compliance with all statutes and regulations applicable to the unloading, stockpiling, storing, and transport of salt at the Site.

17. Respondent failed to submit proposals to the Department for short term and long term procedures to be implemented to prevent run-off and/or discharge of salt into the wetlands and to prevent emissions from the unloading operations and from the stockpiled salt into the ambient air space, pursuant to the April 19, 2000 Notice of Noncompliance.



18. G.L. c. 85, § 7A provides, in relevant part, that any sodium chloride or chemically-treated abrasives or other chemicals used for the removal of snow or ice on roads and stored within two hundred yards of an established river or estuary must be stored in a solid frame storage shed to insure against ground leaching and airborne pollution of surrounding property.

19. G.L. c. 85, § 7A further provides that the Department may regulate the place at which sodium chloride, chemically-treated abrasives, or other chemicals used for the removal of snow or ice on roads is stored.

20. Respondent's activities, as set forth in paragraphs 8. – 17. above, violated and continue to violate G.L. c. 85, § 7A.

21. The Wetlands Protection Act, G.L. c. 131, § 40, provides, in relevant part:

No person shall remove, fill, dredge or alter any area subject to protection under this section without the required authorization, or cause, suffer or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with an enforcement order issued pursuant to this section. Each day such violation continues shall constitute a separate offense.

22. The Wetlands Protection Act, G.L. c. 131, § 40, further provides that anyone who violates any provision of the Act may be ordered to restore the property to its original condition and to take other action to remedy the violation.

23. The Wetlands Regulations, 310 CMR 10.08, provide that it shall be a violation to fail to obtain a valid Final Order of Conditions prior to conducting an activity subject to regulation under the Wetlands Protection Act.

24. By causing or allowing the salt to discharge into the wetlands, as described in paragraphs 8. – 17. above, Respondent altered areas subject to protection under the Wetlands Protection Act, G.L. c. 131, § 40 and the Wetlands Regulations without the required authorization.

25. Respondent's activities, as described in paragraphs 8. – 17. above, violated and continue to violate the Wetlands Protection Act, G.L. c. 131, § 40 and the Wetlands Regulations.

26. The Clean Air Act, G.L. c. 111, §§ 142A – 142J, provides, in relevant part, that the Department may adopt or amend regulations to prevent pollution or contamination of the atmosphere.

27. The Air Regulations promulgated by the Department at 310 CMR 7.00 define an Air Contaminant Source to be any place at or from which any air contaminant is emitted to the ambient air space.

28. The Air Regulations promulgated by the Department at 310 CMR 7.00 define an Air Contaminant to be any substance or man-made physical phenomenon in the ambient air space and includes, but is not limited to, dust, fly ash, gas, fume, mist, odor, smoke, vapor, pollen, microorganism, radioactive material, radiation, heat, sound, or any combination thereof.

29. The Air Regulations promulgated by the Department at 310 CMR 7.00 define Air Pollution to be the presence in the ambient air space of one or more air contaminants in such concentrations and of such duration as to: (a) cause a nuisance; (b) be injurious, or be, on the basis of current information, potentially injurious to human or animal life, to vegetation, or to property; or (3) unreasonably interfere with the comfortable enjoyment of life and property or the conduct of business.

30. The Air Regulations promulgated by the Department at 310 CMR 7.01(1) provide that no person owning, leasing, or controlling the operation of any air contamination source shall willfully, negligently, or through failure to provide necessary equipment or take necessary precautions, permit any emission from said air contamination source or sources of such quantities of air contaminants which will cause, by themselves or in conjunction with other air contaminants, a condition of air pollution.

31. The Site is an Air Contaminant Source, as defined by 310 CMR 7.00

32. The salt stored at the Site is an Air Contaminant as defined by 310 CMR 7.00.

33. Respondent has created a condition of Air Pollution by allowing the salt to be emitted in the ambient air space in sufficient concentrations and of such duration as to cause a nuisance, be potentially injurious to human or animal life, vegetation and property, and to interfere with the comfortable enjoyment of life and property within the vicinity of the Site.

34. By causing or allowing salt to be emitted to the ambient air space, as described in paragraphs 8. – 17. above, Respondent violated the Air Regulations at 310 CMR 7.01(1).

35. Respondent's actions, as described in paragraphs 8. – 17. above, violated and continue to violate the Clean Air Act, G.L. c. 111 §§ 142A – 142J and the Air Regulations.

### III. Disposition and Order

36. Based upon the foregoing Statement of Facts and Law, and pursuant to its authority under G.L. c. 85, § 7A, G.L. c. 131, § 40 and the regulations promulgated

thereunder at 310 CMR 10.00, G.L. c. 111, §§ 142A – 142J and the regulations promulgated thereunder at 310 CMR 7.00, and G.L. c. 21A, § 16 and the regulations promulgated thereunder at 310 CMR 5.00, the Department hereby issues, and Respondent hereby consents to, the following order:

- A. On or before June 9, 2000, Respondent shall submit to the Department, for its review and approval, a draft plan and implementation schedule for the short term controls and procedures to be implemented by Respondent at the Site to prevent runoff or discharges of salt into the wetlands and to prevent emissions of salt to the ambient air space until permanent controls and procedures are implemented. The draft plan shall include, without limitation, the short term controls and procedures set forth in the May 7, 2000 correspondence from Carol R. Wasserman to Robert E. McDonnell, a copy of which is attached hereto as Attachment 1. The schedule shall ensure that the short term controls and procedures are fully implemented within forty-five (45) days of the Department's approval or approval with conditions of Respondent's plan;
- B. Within ten (10) days of the Department's comments on the draft plan and schedule, Respondent shall submit to the Department for its review and approval a revised plan and schedule that corrects any deficiencies identified by the Department and makes any changes deemed necessary by the Department to effectuate the purposes of G.L. c. 85, § 7A, the Wetlands Protection Act and the Wetlands Regulations and the Clean Air Act and the Air Regulations;
- C. The revised plan and schedule submitted pursuant to Paragraph 36.B. above, as approved or approved with conditions by the Department (the "Final Short Term Control Plan") shall be incorporated into and made part of this Administrative Consent Order. Respondent shall undertake all activities in accordance with the Final Short Term Control Plan. Failure to comply with the Final Short Term Control Plan shall constitute a violation of this Administrative Consent Order;
- D. On or before June 9, 2000, Respondent shall submit to the Department for its review and approval, a draft plan and implementation schedule for the interim controls and procedures to be implemented by Respondent at the Site to prevent runoff or discharges of salt into the wetlands and to prevent emissions of salt to the ambient air space until permanent controls and procedures are implemented. The draft plan shall expressly identify any interim controls and procedures that Respondent claims may not be implemented within forty-five (45) days of the Department's approval or approval with conditions of the plan and shall include, without limitation, the interim controls and procedures set forth in the May 7, 2000 correspondence from Carol R. Wasserman to Robert E. McDonnell, a copy of which is attached hereto as Attachment 1. The

schedule shall ensure that all interim controls and procedures not otherwise expressly identified by Respondent are fully implemented within forty-five (45) days of the Department's approval or approval with conditions of Respondent's plan;

- E. Within ten (10) days of the Department's comments on the draft plan and schedule, Respondent shall submit to the Department for its review and approval a revised plan and schedule that corrects any deficiencies identified by the Department and makes any changes deemed necessary by the Department to effectuate the purposes of G.L. c. 85, § 7A, the Wetlands Protection Act and the Wetlands Regulations and the Clean Air Act and the Air Regulations;
- F. The revised plan and schedule submitted pursuant to Paragraph 36.E. above, as approved or approved with conditions by the Department (the "Final Interim Control Plan") shall be incorporated into and made part of this Administrative Consent Order. Respondent shall undertake all activities in accordance with the Final Interim Control Plan. Failure to comply with the Final Interim Control Plan shall constitute a violation of this Administrative Consent Order;
- G. On or before July 14, 2000, Respondent shall submit to the Department, for its review and approval, a draft plan and implementation schedule for the long term controls and procedures to be implemented by Respondent at the Site to: (1) prevent runoff or discharges of salt into the wetlands; (2) prevent emissions of salt to the ambient air space, and (3) come into full compliance with G.L. c. 85, § 7A, G.L. c. 131, § 40 and the regulations promulgated thereunder, and G.L. c. 111, §§ 142A – 142J and the regulations promulgated thereunder. The draft plan shall include, without limitation, the long term controls and procedures set forth in the May 7, 2000 correspondence from Carol R. Wasserman to Robert E. McDonnell, a copy of which is attached hereto as Attachment 1 and the schedule shall ensure that the long term controls and procedures are fully implemented on or before July 2, 2002;
- H. Within thirty (30) days of the Department's comments on the draft plan and schedule, Respondent shall submit to the Department for its review and approval a revised plan and schedule that corrects any deficiencies identified by the Department and makes any changes deemed necessary by the Department to effectuate the purposes of G.L. c. 85, § 7A, the Wetlands Protection Act and the Wetlands Regulations and the Clean Air Act and the Air Regulations;
- I. The revised plan and schedule submitted pursuant to Paragraph 36.H. above, as approved or approved with conditions by the Department (the "Final Long Term Control Plan") shall be incorporated into and made part of this



Administrative Consent Order. Respondent shall undertake all activities in accordance with the Final Long Term Control Plan. Failure to comply with the Final Long Term Control Plan shall constitute a violation of this Administrative Consent Order; and

- J. The Department hereby determines, and Respondent hereby agrees, that the deadlines set forth above constitute reasonable time for performing the activities described above and coming into compliance with the requirements cited in Article II. of this Administrative Consent Order.

37. In addition to being an Administrative Consent Order, this is also a Notice of Noncompliance issued pursuant to G.L. c. 21A, § 16 for Respondent's noncompliance with G.L. c. 85, § 7A, the Wetlands Protection Act, G.L. c. 131, § 40 and the Wetlands Regulations, and the Clean Air Act, G.L. c. 111, §§ 142A – 142J and the Air Regulations, as identified in Article II. above. Future violations of those requirements or the requirements of this Administrative Consent Order may result, without limitation, in the assessment of additional civil administrative penalties for each day, or portion thereof, each such violation occurs or continues.

38. Submittals required by this Administrative Consent Order shall be considered delivered upon receipt by the Department. All submissions required by this Administrative Consent Order shall be submitted to:

Ron Stelling

Division of Watershed Management  
Department of Environmental Protection  
Northeast Regional Office  
205A Lowell Street  
Wilmington, Massachusetts 01887

39. Respondent admits to the jurisdiction and authority of the Department to issue this Administrative Consent Order. Respondent understands and hereby waives its right to an adjudicatory hearing before the Department on, and judicial review of, the issuance and/or terms of this Administrative Consent Order and to notice of any such rights of review.

40. Nothing in this Administrative Consent Order shall be construed or operate as barring, diminishing, adjudicating, or in any way affecting: (1) any legal or equitable right of the Department to issue any future order with respect to the subject matter covered by this Administrative Consent Order or (2) any other legal or equitable right of the Department to pursue any claim, action, suit, cause of action, demand or right to relief that the Department may have with respect to the subject matter covered by this Administrative Consent Order. This Administrative Consent Order shall not be construed

as or operate as barring, diminishing, or adjudicating or in any way affecting any legal or equitable right of the Department with respect to any subject matter not covered by this Administrative Consent Order.

41. This Administrative Consent Order shall apply to and be binding upon Respondent, its officers, employees, agents, consultants, contractors, successors, and assigns. Respondent shall not violate this Administrative Consent Order and shall not allow or suffer its officers, employees, agents, consultants, contractors, successors, or assigns to violate this Administrative Consent Order. A violation of this Administrative Consent Order by any of the foregoing shall constitute a violation of this Administrative Consent Order by Respondent.

42. Except as provided herein, this Administrative Consent Order does not relieve Respondent or any other person of the necessity of complying with all applicable federal, state, and local statutes, regulations and approvals while performing activities pursuant to this Administrative Consent Order. Any noncompliance with the foregoing shall constitute a violation of this Administrative Consent Order.

43. Failure on the part of the Department to complain of action or inaction on the part of Respondent shall not constitute a waiver by the Department of any rights under this Administrative Consent Order, nor shall a waiver by the Department of any provision of this Administrative Consent Order be construed as a waiver of any other provision of this Administrative Consent Order.

44. This Administrative Consent Order may be modified only by the written agreement of the parties. This Administrative Consent Order and the obligations hereunder may not be assigned by Respondent.

45. If Respondent violates this Administrative Consent Order, Respondent shall pay to the Commonwealth stipulated penalties of two thousand (\$2,000.00) dollars per day for each day of each violation of this Administrative Consent Order. All stipulated penalties accruing under this Administrative Consent Order shall be paid within thirty days of the date the Department sends a written demand therefor. Stipulated penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day that Respondent corrects the violation or completes performance, whichever is applicable. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Administrative Consent Order. Stipulated penalties shall accrue regardless of whether the Department has notified Respondent of a violation. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete performance as required by this Administrative Consent Order. The stipulated penalties set forth herein shall not preclude the Department from electing to pursue alternative remedies or alternative civil or criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Administrative Consent Order. In the event that the Department collects alternative civil administrative

penalties, Respondent shall not be required to pay stipulated penalties pursuant to this Administrative Consent Order.

46. Payment of all penalties due under this Administrative Consent Order is necessary for Respondent to come into compliance with G.L. c. 85, § 7A, the Wetlands Protection Act and the Wetlands Regulations, and the Clean Air Act and the Air Regulations. In the event Respondent fails to pay in full any penalty on or before the date due under this Administrative Consent Order, Respondent shall pay to the Commonwealth three times the amount of the penalty together with costs, plus interest on the balance due from the date the penalty became due. The rate of interest shall be the rate set forth in G.L. c. 231, § 6C. If a court judgment is necessary to execute a claim for any penalty due under this Administrative Consent Order, Respondent agrees to assent to the entry of such judgment.

47. Respondent shall pay all penalties due under this Administrative Consent Order by certified check, cashier's check or money order payable to the Commonwealth of Massachusetts. Respondent shall clearly print the name "Eastern Minerals, Inc.," File No. ACO-NE-9001-67 and Respondent's Federal Employee Identification Number on the face of the payment and shall mail it to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3584  
Boston, Massachusetts 02241-3584

and shall deliver a copy of the payment to:

Madelyn Morris  
Deputy Regional Director  
Bureau of Resource Protection  
Department of Environmental Protection  
205A Lowell Street  
Wilmington, Massachusetts 01887

48. Respondent shall allow Department personnel to enter and inspect the area where it is performing any work under this Administrative Consent Order at reasonable times and without notice for the purpose of assessing Respondent's compliance with this Administrative Consent Order, G.L. c. 85 § 7A, the Wetlands Protection Act and the Wetlands Regulations, and the Clean Air Act and the Air Regulations.

49. The provisions of this Administrative Consent Order are severable and if any provision of this Administrative Consent Order or the application thereof is held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or

enforceability of any other provision of this Consent Order which shall be given full effect without the invalid or unenforceable provision provided, however, that the Department may, in its sole discretion, elect to void the entire Administrative Consent Order in the event of such invalidity or unenforceability.

50. This Administrative Consent Order constitutes the entire understanding and agreement between the Department and Respondent with regard to Respondent's obligations arising out of the subject matter of this Administrative Consent Order.

51. The undersigned represent that he/she has the authority to sign this Administrative Consent Order and to legally bind himself/herself and/or the party on whose behalf such representative is signing. This Administrative Consent Order shall take effect on the date that it is signed by the Department.

CONSENTED TO:

Eastern Minerals, Inc.

By: \_\_\_\_\_

Typed Name:

Title:

Date:

FEIN: \_\_\_\_\_

SO ORDERED:

Department of Environmental Protection

By: \_\_\_\_\_

Typed Name: Madelyn Morris

Title: Deputy Regional Director, Northeast Regional Office

Date: